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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
Implementation of the)	CC Docket
Pay Telephone Reclassification)	No. 96-128
and Compensation Provisions of the)	
Telecommunications Act of 1996)	

AT&T Opposition to Petitions for Reconsideration

Pursuant to the Commission's Public Notice (DA 99-1266, June 25, 1999), AT&T Corp. ("AT&T") hereby submits its opposition to the petition for reconsideration of the Commission's Third Report and Order ("Third Report") filed by the Colorado Payphone Association ("CPA").

CPA's petition generally plows old ground, raising issues that were or should have been addressed earlier in this proceeding.¹ The petition should thus be denied in its entirety.

First, CPA (pp. 5-16) challenges the Commission's use of certain factors in setting carriers' default compensation obligations. Second, it (pp. 16-19) alleges that the Commission committed error in not requiring IXCs

¹ E.g., Regulatory Policy Regarding the Direct Broadcast Satellite Service, 94 F.C.C.2d 741 (1983), para. 11 ("petitions for reconsideration are not granted for the purpose of debating matters which have already been fully considered and substantively settled") (citations omitted).

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to spend additional tens of millions of dollars to implement per-call blocking capabilities. Third, notwithstanding the crystal-clear direction from the Court of Appeals, it (pp. 19-25) claims that the Commission should not require PSPs to refund any overpayments for compensation paid before the issuance of the Third Report. All of these requests should be rejected.

CPA makes three claims about the Commission's calculation of PSP costs. First, it asserts that the Commission should not have used the 11A payphone set as a basis for calculating payphone costs. Next, it argues that the 11.25% cost of capital rate applied by the Commission is too low. Finally, it claims that the Commission understated the costs of payphone maintenance. None of these arguments merits reconsideration.

AT&T proposed the use of the 11A set in calculating the costs of coinless calls in 1997, in its comments in response to the first remand from the Court of Appeals.² Commenters thus had opportunities to discuss all aspects of the use of the 11A set for these purposes during the comments regarding both the Second Report and Order and the

² AT&T Comments, August 26, 1997, Affidavit of David Robinson ("Robinson Aff."), p. 3.

Third Report. The mere fact that CPA "disagrees" (p. 5) with the Commission's decision to rely upon the costs of the 11A set is simply irrelevant. Moreover, CPA's petition provides no newly discovered evidence but merely recites the arguments of other commenters that the Commission has already rejected. This is a clearly inadequate basis upon which to grant reconsideration.

Despite CPA's efforts to provide so-called "supplementary" information regarding the cost of capital, the 11.25% cost of rate the Commission used is not new to the Third Report. Interest at that rate was added to the Commission's calculation of the compensation amount in the Second Report and Order (§ 60), based upon a specific finding that *"11.25% is the appropriate cost of capital for payphone providers in this context."* (emphasis added) No one challenged that ruling at that time, i.e., September 1997), and CPA's petition, filed 18 months later, is clearly untimely. Moreover, even the supplemental information that CPA now presents does not purport to be newly discovered; indeed, all of the data underlying the report is of a kind that was previously available.

Accordingly, this claim must also be rejected as a basis for reconsideration.³

CPA's analysis and criticism of the FCC's calculation of maintenance expenses is also without merit and should be disregarded. Reviewing evidence provided by one PSP (Peoples), CPA contends that the 56,157 combined maintenance and collection payphone visits should be excluded from the coin collection impact calculation, because the repair would have been done "even if there were no coins to collect." This assertion is too simplistic and misses an important point. Peoples reported that it made 200,591 collection-only service calls in six months on almost 40,000 phones, i.e., almost one collection call/phone/month. If Peoples' staff did not collect the coins on a "combined" service call, they would have had to make a collection-only service visit, therefore driving up the 200,591 collection visits. It is also important to note that the 38% adjustment the Commission used in the

³ Regulatory Policy Regarding the Direct Broadcast Satellite Service, supra, ("reconsideration based on new facts is appropriate only when these facts relate to events subsequent to the last opportunity for submission, were unknown at the time of the last opportunity, or the Commission determines that subsequent consideration is required to protect the public interest"). Considering that PSPs have had years to make these arguments, there is no reason for the Commission to reopen its deliberations at this time.

Third Report was referenced in the Second Report and Order (¶ 83) and no PSP, including Peoples, raised any issue with the FCC's interpretation of Peoples' data at that time.

Further, the Commission's allowance for maintenance expense for coinless calls is already generous. AT&T previously demonstrated that coin phones require substantially more maintenance visits (and costs) than coinless phones.⁴ Nevertheless, the current compensation rate for coinless calls makes no adjustment for this fact.⁵ Thus, no modification to the FCC's analysis is warranted.

CPA's request for the Commission to order carriers to implement targeted call blocking should also be rejected.

⁴ Robinson Aff., pp. 6-7.

⁵ The Commission should also recognize that weighting the BOC (SBC) maintenance cost data at \$24.37/month with Peoples' data, representing the independent PSPs, at \$41.66/month gives all PSPs a huge benefit by including a cost structure that -- at best -- is hard to understand. AT&T understands that Peoples employs non-union labor, which is much less expensive than the represented labor costs of SBC and other BOCs, and labor cost, including associated salaries and benefits, is the single largest component of the "Maintenance" cost category. Further, Peoples uses almost exclusively "smart" payphones, whereas the majority of BOC payphones are "dumb" payphones. Smart payphone manufacturers regularly advertise that smart payphones reduce overall maintenance expense. Peoples payphones are also likely to be newer than BOC phones and should thus require less preventative maintenance. For all these reasons, it is difficult to understand how Peoples' maintenance expenses can reasonably (and reliably) be 70% more than SBC's.

Again, the Petition cites no new facts in support of its arguments and merely asks the Commission to make a different decision. But the Commission properly took a "wait and see" attitude here.⁶ The record demonstrates that such a requirement would impose huge costs on carriers. Moreover, there has been no opportunity for a "market" to operate for the simple reason that the Commission's rules on payphone compensation are still not settled, so carriers cannot determine whether such enormous expenditures are economically justified.⁷ Thus, there is no reason for the Commission to change its mind on this subject at this time.

Finally, CPA's request (pp. 19-25) for reconsideration of the refund obligations set forth in the Third Report is simply incredible. As the Commission itself recognized in the Third Report (§ 195), the Court of Appeals' decision not to vacate the Second Report and Order - and thus leave PSPs subject to no valid compensation rules (as they were when the Court vacated the First Report and Order) - was predicated on its express understanding that the Commission

⁶ Petition, p. 18.

⁷ Indeed, oral argument on appeals of the Third Report will not be held until November 1999.

would provide for a true-up on remand.⁸ CPA's petition fails even to mention the Court's clear direction on this issue, and nothing the CPA argues here can change that fact. Accordingly, the request for reconsideration on this issue must be denied.

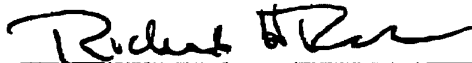
Conclusion

For the reasons stated above, CPA's petition for reconsideration should be denied.

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⁸ Id. ("[i]n deciding to remand, rather than vacate, the Second Report and Order, the Court expressly explained that its decision was based, in part, on 'the clear understanding that if and when on remand the Commission establishes some different rate of fair compensation for coinless payphone calls, the Commission may order payphone service providers to refund to their customers any excess for coinless calls collected pursuant to the current [\$.284] rate'").